INDEX

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1180

OLD DOMINION BRANCH NO. 496, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, *Appellants,*

v.

HENRY M. AUSTIN, L. D. BROWN, AND ROY P. ZIEGENGEIST, *Appellees.*

On Appeal from a Judgment of the Supreme Court of Virginia

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the Virginia Supreme Court (J. S. 1a-11a)* is reported at 213 Va. 377, 192 S.E.2d 737.

*"J.S." refers to Appellants' Jurisdictional Statement.

JURISDICTION

The judgments below were entered on November 17, 1972 and the Notices of Appeal were filed on December 20, 1972. The jurisdictional statement was filed on February 26, 1973. This Court noted probable jurisdiction on May 29, 1973. Jurisdiction to review the decision below by direct appeal is conferred upon this Court by 28 U.S.C. § 1257(2).

STATUTE AND EXECUTIVE ORDER INVOLVED

Code of Va. § 8-630 (1957) provides: "Action for insulting words.—All words which from their usual construction and common acceptation are construed as insults and tend to violence and breach of the peace shall be actionable."

Executive Order 11491, 34 Fed. Reg. 17,605 (1969), is set out at J.S. 12a-33a.

QUESTIONS PRESENTED

1. Whether *Linn* v. *Plant Guard Workers,* 383 U.S. 53 (1966), precludes, as a matter of national labor policy, a state court award of defamation damages for a statement published in a local union newspaper which accurately identifies certain employees as "scabs" and defines "scab" in pejorative terms.

2. Whether a damage award based upon the aforesaid publication is barred by the First and Fourteenth Amendments to the Constitution of the United States.

3. Whether a state statute which, as authoritatively construed, makes "insulting words" actionable, with-

out a showing of immediate danger of breach of the peace, if the words are uttered with "actual malice," defined as hostility, is unconstitutionally overbroad and void for vagueness.

4. Whether an award of compensatory and punitive damages totaling $165,000, for publishing the statement in question, is "excessive" within the meaning of *Linn, supra*, 383 U.S. at 65-66.

STATEMENT

A. The Facts

Appellant Old Dominion Branch No. 496 (Branch) is an autonomous local union affiliated with appellant National Association of Letter Carriers, AFL-CIO (NALC). Under Executive Order 11491, and, subsequently, the Postal Reorganization Act and the National Labor Relations Act, the postal authorities at all relevant times have recognized NALC as the national and Branch as the local exclusive collective bargaining representative of city letter carriers in the Richmond area.[1] During the period relevant herein, appellees were city letter carriers whom appellants represented under compulsion of the Executive Order. But appellees were "free riders": they were

[1] Under the Postal Reorganization Act, 84 Stat. 719 (1970), 39 U.S.C.A. § 101 *et seq.* (1972 Supp.), certain provisions of the Postal Reorganization Act and the National Labor Relations Act superseded the cited Executive Order. See 39 U.S.C.A. §§ 1201-1209; Postal Reorganization Act §§ 10, 15a, 84 Stat. 784, 787 (1970). Appellants' representative status and the rights of employees established by the Executive Order remain in effect under the Postal Reorganization Act and contracts negotiated pursuant thereto.

nonmembers who paid no dues or fees to either Branch or NALC.[2]

In an effort to induce nonmembers like appellees to join, Branch from time to time published the names of nonmembers (including appellees) under the heading "List of Scabs" in the Branch's monthly newsletter.[3] The newsletter is distributed by mail to Branch members only (A. 36). Shortly before the June, 1970, issue, plaintiff Austin told Branch President Hutchins "I didn't know what a scab was." (J.S. 39-40, 30-31). In a column in the June issue titled "The Scab," the Branch noted that "[s]ome co-workers are in a quandary as to what a scab is; we submit the following:" (A. 72). "The following," printed above the "List of Scabs," was a well-known piece of trade union literature, generally thought to have been written by Jack London, defining "scab" in highly uncomplimentary terms.[4]

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[2] Neither the Executive Order nor the Postal Reorganization Act permits contracts making union membership a condition of employment. Executive Order 11491, § 12(c) (J.S. 25a); 39 U.S.C.A. § 1209(e) (1972 Supp.).

[3] The record shows that, in labor parlance, a "scab" is a nonmember (A. 50-51, 55). See, *e.g.*, *Webster's Third New International Dictionary* "scab," 4:b(1) ("one who refuses to join a union"); *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition* (The World Pub. Co., 1968), p. 1614.

[4] The column read as follows (J.S. 2a-3a):

"The Scab

"Some co-workers are in a quandary as to what a scab is; we submit the following:

'After God had finished the rattlesnake, the toad, and the vampire, He had some awful substance left with which He made a scab.

'A scab is a two-legged animal with a corkscrew soul, a water brain, a combination backbone of jelly and glue.

The June issue was posted on a station bulletin board (J.S. 3a), by whom does not appear. There is no evidence that anyone other than a letter carrier saw it there.

B. The Proceedings in the Trial Court

Appellees filed "Motions for Judgment," *i.e.*, complaints for damages, in the Law and Equity Court of the City of Richmond, Virginia, almost immediately after the article appeared (A. 7). Thereafter, appellants filed demurrers contending that the publication complained of is protected against state court damage suits by the freedom of speech guarantee of the United States Constitution and by federal labor law. The demurrers were overruled in an opinion holding that the suits are governed by the Virginia "insulting words" statute, Code of Va., § 8-630, and that the statute, as applied to the challenged publication, is constitutional (A. 11-20). Defendants thereafter

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Where others have hearts, he carries a tumor of rotten principles.

'When a scab comes down the street, men turn their backs and angels weep in Heaven, and the Devil shuts the gates of hell to keep him out.

'No man (or woman) has a right to scab so long as there is a pool of water to drown his carcass in, or a rope long enough to hang his body with. Judas was a gentleman compared with a scab. For betraying his Master, he had character enough to hang himself. A scab has not.

'Esau sold his birthright for a mess of pottage. Judas sold his Savior for thirty pieces of silver. Benedict Arnold sold his country for a promise of a commission in the British Army. The scab sells his birthright, country, his wife, his children and his fellowmen for an unfulfilled promise from his employer.

'Esau was a traitor to himself, Judas was a traitor to his God, Benedict Arnold was a traitor to his country; a SCAB is a traitor to his God, his country, his family and his class.'"

filed timely answers (A. 21-26), affirmatively asserting, *inter alia,* constitutional defenses predicated upon the First and Fourteenth Amendments and the Supremacy Clause of the United States Constitution, and explicitly pleading that the Virginia statute for insulting words "on its face and as construed and applied to the complaint herein in the letter opinion of the Court dated January 21, 1971" (overruling the demurrer) is void for overbreadth and vagueness.

At trial, appellee Austin testified that after he was identified as a scab some of his co-workers stopped speaking to him and otherwise manifested hostility toward him, and that one postal worker's wife called him a "scab" (A. 42-43). Seven months after the article appeared (and after suit was filed), he testified, he got a migraine headache (A. 43). Another appellee, Brown, testified that the article upset him, that he had headaches, and that some of his co-workers called him "scab" and other names (A. 49). The third appellee, Ziegengeist, testified that after the publication some of his co-workers became "cool" towards him (A. 43). His teenage daughter also testified that after "the *case* came up" she feared someone might come and harm "us" and that Ziegengeist and his wife had many arguments (A. 47, emphasis added). There was no other evidence of injury. See J.S. 3a-4a. At the close of plaintiffs' case, and again after all the evidence was in, appellants moved the court to enter judgment in their favor, renewing their constitutional objections. These motions were denied (A. 49-50, 58-59).

The trial court instructed the jury that the occasion on which the statements in question had been made was privileged; that defendants were therefore liable only if they had "abused" the privilege by

making "defamatory" statements with "actual malice"; that statements are defamatory and libelous if they contain "words which from their usual construction and common acceptance are construed as insults and tend to violence and breach of the peace," and that "actual malice" means having been "actuated by some sinister or corrupt motive such as hatred, personal spite, ill will, or desire to injure the plaintiff; or that the communication was made with such gross indifference and recklessness as to amount to a wanton or willful disregard of the rights of the plaintiff." (J.S. 9a-10a; A. 92-94). The court denied defendants' request for an instruction defining a malicious publication as one intended "to constitute a [false] representation of fact or facts, as distinguished from an expression of feelings, emotions or opinions, and . . . known by its maker to be false in fact or . . . made without regard or concern for its factual truth." The court explained to counsel that, under Virginia law, hyperbole and statements of opinion, no less than statements of fact, are actionable (A. 60-62, 86-88). No cautionary instruction was given as to the amount of damages. Defendants took appropriate objections and exceptions (A. 46-54, 59-67).

The jury returned a verdict awarding each of the appellees $10,000 in compensatory damages and $45,000 in punitive damages. Appellants then moved for judgment, N.O.V., for a new trial, and for a remittitur. These motions, too, were denied (A. 55-56, 69-70).[5]

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[5] Proceedings in a suit filed by another employee whose name appeared in the June, 1970, newsletter have been held in abeyance by stipulation pending the outcome of this appeal.

C. The Decision Below

On appeal, the Supreme Court of Virginia held that the Virginia insulting words statute had been narrowed by state court decisions making the common law rules of slander applicable to actions under the statute, so that defamatory words, if uttered on a privileged occasion, are actionable only upon a showing of "actual malice," as defined by the trial court (J.S. 5a, 10a). The court declared that where the defamatory statement "was made with actual malice" the "public interest in free expression and communication of ideas" does not "outweigh [ ] the interest of the State in protecting the individual plaintiff from damage to his reputation and social relationships" (J.S. 5a). In the court's view, since the Virginia statute condemns "privileged" statements only if made with "actual malice" it reaches "only those words that are not protected by the First Amendment" (J.S. 5a).

The court also held that the *New York Times*[6] definition of "actual malice" was inapplicable because that definition extends only to publication of matters of "general or public interest" (J.S. 8a). Since plaintiffs had a right, under both federal and state law, not to join the union, the court reasoned, their refusal to join "was only a private matter and an issue of general concern or public interest was not involved." (*Ibid.*) The court found *Linn* v. *Plant Guard Workers,* 383 U.S. 53 (1966), support for its position, quoting its cession to state courts of power to award damages for "malicious utterance of defamatory statements" in labor disputes (J.S.

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[6] *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964).

6a-7a). But the court ignored *Linn's* adoption by analogy of the *New York Times'* definition of "actual malice" as knowing or reckless falsity, and its holding that state power to award damages for defamatory statements in labor disputes is confined by the *New York Times* standards and *its* definition of "actual malice."

The lower court also ignored *Linn's* holding that state courts may not award "excessive" damages for defamatory statements in labor disputes (J.S. 11a). It said that "there is no fixed standard for measuring exemplary or punitive dameges, and the amount of the award is largely a matter of discretion with the jury." It held that "[w]e cannot say from the evidence presented that the amounts . . . awarded plaintiffs were excessive" (J.S. 11a).

INTRODUCTION AND SUMMARY OF ARGUMENT

In this case, judgments totaling $165,000 were entered against the defendants merely for publishing in a local labor union (Branch) newsletter, mailed only to members of the Branch, the fact that plaintiffs (and twelve others) were "scabs"—*i.e.,* nonmembers of the union—together with an old piece of literature generally attributed to Jack London which expresses in colorful language the contempt which union people feel toward "scabs." No false statement of fact was contained in the publication. It is undisputed that plaintiffs were not union members and the word "scab," while not commonly used as an epithet outside labor circles, is simply a synonym for "nonmember" and is so defined in leading dictionaries (A. 39-40). The text which accompanied the publication of plaintiffs' names was obviously not intended to be

—and could not reasonably be construed as—a statement or representation of fact. Rather it was simply a literary way of expressing the emotional attitude of union people toward "scabs" in general (J.S. 4a).

The court below held that this expression of disdain for fellow workers who refuse to join a union is actionable under state law despite the First Amendment and the protection which federal labor law extends to adversary speech in disputes over unionization, because it "was made with actual malice" (J.S. 5a, 9a). In its view, where "actual malice," in the sense of hostility or disregard of the subject's "rights" (pp. 7, 8, *supra*), is found, "the interest of the State in protecting the individual . . . from damage to his reputation and social relationships" outweighs "the public interest in free expression and communication of ideas" (J.S. 5a).

The court below recognized that this Court reached exactly the opposite result in *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964) and it progeny (J.S. 7a-8a). But it distinguished that line of cases on the ground that "whether or not [plaintiffs] joined the union did not present an issue of public or general concern" and that therefore "the public interest in free expression and communication of ideas" did not predominate here (J.S. 8a). The court below failed to recognize that in *Linn* v. *Plant Guard Workers,* 383 U.S. 53 (1966), this Court held that the interests of the adversaries and of the Nation in free expression and communication of ideas in labor disputes governed by federal law require imposition of the *New York Times* standards as limitations upon state court jurisdiction over defamatory publications arising out of such disputes. Thus, under *Linn,* the

issue of plaintiffs' nonmembership in the union—a typical labor dispute—is treated as one of "public or general concern." Accordingly, expressions pertaining to that issue are governed by the *New York Times* standards as a matter of federal preemption, even assuming, *arguendo,* that those standards do not govern directly, under the First and Fourteenth Amendments.

In *Linn,* this Court repudiated common law malice as the touchstone of actionability of defamatory utterances in labor disputes governed by federal law because it deemed a different and stricter rule necessary to safeguard paramount federal interests in freedom of expression and communication in such disputes. The Court thought the rules enunciated in *New York Times* pertaining to defamation of public officials appropriate. At that time, it was necessary to adopt the *New York Times* tests by analogy, for the scope of that holding had not yet extended beyond "public figures." Its subsequent extension to issues of "public or general interest," makes the rule directly applicable to labor disputes, for labor disputes have long been recognized as matters of "public and general concern" and freedom of speech in labor disputes has long been guaranteed by the First and Fourteenth Amendments. *Cafeteria Union* v. *Angelos,* 320 U.S. 293 (1943).

Whether applied under the Supremacy Clause or under the First Amendment, the *New York Times* standards protect the publication at issue against state defamation actions. Calling nonmembers "scabs," and disseminating the Jack London definition of "scab," is protected by national labor policy. *Linn, supra,* 383 U.S. at 60-61; *Cambria Clay Pro-*

ducts Co., 106 NLRB 267, 273 (1953). Under *Greenbelt Pub. Assn.* v. *Bresler*, 398 U.S. 6, 14 (1970), that definition must be read as colorful hyperbole rather than as constitutionally actionable representations of fact. And under *Organization for a Better Austin* v. *Keefe*, 402 U.S. 415, 419 (1971), evocation from members of aversion to plaintiffs because of their refusal to join the Union is constitutionally protected despite the "coercive" effect of that aversion upon plaintiffs' decision to remain apart.

Virginia's "insulting words" statute, under which this action was brought, remains unconstitutionally overbroad and vague on its face and as applied, despite the assertion below that constitutionality is attained by confining the statute's application to defamatory utterances actuated by "malice," as defined by the trial court (J.S. 5a). And, by failing to review the award of damages and to find it "excessive," the courts below repudiated the obligation of, and the trust reposed in, state courts by *Linn*.

ARGUMENT

I. THE COURT BELOW ERRED IN HOLDING NEW YORK TIMES INAPPLICABLE

A. The court below misread Linn

The decision below is in irreconcilable conflict with *Linn* v. *Plant Guard Workers*, 383 U.S. 53 (1966). In *Linn*, this Court narrowly confined the scope of state power "with respect to libels published during labor disputes" (383 U.S. at 57), in order to "guard[] against abuse of libel actions and unwarranted intrusion upon free discussion envisioned by the [National Labor Relations] Act." *Linn, supra*, 383 U.S. at 65.

It sought to assure that recognition of "legitimate state interests" in compensating the victims of "malicious libel" (383 U.S. at 61) would not "interfere with effective administration of the national labor policy ...." 383 U.S. at 64.

The Court observed at the outset (383 U.S. at 58):

> "Labor disputes are ordinarily heated affairs; the language that is commonplace there might well be deemed actionable *per se* in some state jurisdictions. Indeed, representation campaigns are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, *vituperations, personal accusations,* misrepresentations and distortions. Both labor and management often speak bluntly and recklessly, embellishing their respective positions with *imprecatory language. Cafeteria Union* v. *Angelos,* 320 U.S. 293, 295 (1943)." (Emphasis added.)

The Court then noted (383 U.S. at 60), that "the [National Labor Relations] Board has given frequent consideration to the type of statements circulated during labor controversies, and that it has given wide latitude to the competing parties." Thus, "in a number of cases the Board has concluded that epithets such as 'scab,' 'unfair,' and 'liar' are commonplace in these [union representation] struggles and not so indefensible as to remove them from the protection of § 7, even though the statements are erroneous and defame one of the parties to the dispute." 383 U.S. at 60-61.[7] The Court observed that, on the other hand, the Board "does not interpret the Act as giving either party

[7] That statement by this Court, together with the line of Board cases it reflects, dictate reversal because it establishes that defendants' publication was protected by federal law, see pp. 34-35, *infra.*

license to injure the other intentionally by circulating defamatory or insulting material *known to be false*" (*id.*, emphasis added).

Under these circumstances, the Court held, state damage actions "limited to redressing libel issued with knowledge of its falsity, or with reckless disregard of whether it was true or false" would be "merely a peripheral concern of the Labor Management Relations Act," and allowing them would vindicate " 'an overriding state interest' in protecting its residents from malicious libels . . . ." 383 U.S. at 61.

The Court pointed out that the considerations underlying *New York Times Co.* v. *Sullivan, supra,* 376 U.S. at 270, "weigh heavily here: the most repulsive speech enjoys immunity provided it falls short of a deliberate or reckless untruth" (383 U.S. at 63). Accordingly, protection extends to "vehement, caustic and sometimes unpleasantly sharp attacks" (383 U.S. at 62).

In view of the identity of the policy considerations underlying protection of defamation of public officials and those underlying protection of defamation in labor disputes, the Court adopted the *New York Times* rules by analogy, thereby "[c]onstruing the Act to permit recovery of damages in a state cause of action *only* for defamatory statements published with knowledge of their falsity or with reckless disregard of whether they were true or false . . . ." 383 U.S. at 65. (Emphasis added.)

Linn plainly governs here, for a dispute among postal employees over whether to join a labor union is a "labor dispute" within the meaning of federal law, and the object of the publication in issue was organization. *Linn, supra,* 383 U.S. at 61. See National Labor Relations Act § 2(9), 49 Stat. 450 (1935), 29

U.S.C.A. § 152(9) (1973); Labor-Management Relations Act, 1947, § 1(b), 61 Stat. 136 (1947), 29 U.S.C.A. § 141(b) (1973); Norris LaGuardia Act § 13, 47 Stat. 73 (1932), 29 U.S.C.A. § 113 (1973); 39 U.S.C.A. § 1209(a) (1973 Supp.); *Senn* v. *Tile Layers Union*, 301 U.S. 468, 473 (1937); *Cafeteria Union* v. *Angelos*, 320 U.S. 293.[8]

The courts below recognized that *Linn* is relevant to the instant controversy (J.S. 6a-7a, A. 18). But instead of respecting *Linn's* holding that state court jurisdiction over defamation in labor disputes extends only to suits for knowing or reckless *falsehood*, the trial court held that falsehood is irrelevant to appellees' cause of action (A. 48). It sent the case to the jury on the theory that the cause of action was one for "malicious libel," *i.e.*, libel "actuated by some sinister or corrupt motive such as hatred, personal spite, ill will or desire to injure the plaintiff or that the communication was made with such gross indifference and recklessness as to amount to wanton or willful disregard of the rights of the plaintiff" (J.S. 10a). The court below affirmed, citing *Linn* itself as authority for state power to proceed on this theory (J.S. 6a-7a).

Linn does, it is true, use the word "malice." See 383 U.S. at 55, 63-64. But the entire thrust of the *Linn* opinion and its adoption of *New York Times Co.*

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[8] Although *Linn, supra*, arose under the National Labor Relations Act, rather than under the Executive Order (see note 3, p. 1, *supra*), the Order is essentially equivalent to that Act in both content and purpose, and "is to be accorded the force and effect given to a statute enacted by Congress," as the court below held. (J.S. 6a, n. 1). See *Farkas* v. *Texas Instrument, Inc.*, 375 F.2d 629, 632 (5th Cir. 1967), cert. denied, 389 U.S. 977 (1967). See also *Farmer* v. *Philadelphia Elec. Co.*, 329 F.2d 3, 8 (3d Cir. 1964); *Gnotta* v. *United States*, 415 F.2d 1271, 1275 (8th Cir. 1969).

v. *Sullivan* by analogy make perfectly plain that this Court was not using "malice" in its common law sense, 383 U.S. at 61, 63, 65, as the courts below seemed to think, but in the special sense in which malice is used in *New York Times, i.e.*, "defamatory statements published with a reckless disregard of whether they were true or false . . . ." *Linn, supra,* 383 U.S. at 65. Accord, *id.* at 61, 63. Decisions before and since *Linn,* elucidating *New York Times,* have made it perfectly clear that "malice," as that term was defined by the courts below, is not a saving feature of libel actions to which the rule of *New York Times* applies.[9] *Garrison* v. *Louisiana,* 379 U.S. 64, 73-74, 77-79 (1964); *Henry* v. *Collins,* 380 U.S. 356 (1965); *Rosenblatt* v. *Baer,* 383 U.S. 75, 84 (1966); *Greenbelt Pub. Assn.* v. *Bresler,* 398 U.S. 6, 9-10 (1970); *Beckley Newspapers* v. *Hanks,* 389 U.S. 81, 82-83 (1967). The common law malice "test gives insufficient breathing space to First Amendment values." See *Rosenbloom* v. *Metromedia,* 403 U.S. 29, 52, & n. 18 (1971): "ill will toward the plaintiff, or bad motives, are not elements of the *New York Times* standard."[10]

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[9] In *Gertz* v. *Robert Welch, Inc.*, No. 72-617, petitioner claims, *inter alia,* that the Seventh Circuit went too far in applying *New York Times* by denying him opportunity to prove that the defamatory statements about him were made with malice in the *New York Times* sense. By contrast, in this case, the courts below denied defendants the benefit of *New York Times* altogether.

[10] Although the "knowingly false" test of *New York Times* is sometimes referred to as "actual malice," it is not to be confused with common law "malice" which also encompasses "hatred, ill will, or enmity or a wanton desire to injure." *Garrison, supra,* 379 U.S. at 78. In order to avoid such confusion, this Court has suggested that "jury instructions that are couched only in terms of knowing or reckless falsity, and omit reference to 'actual malice,' would further a proper application of the *New York Times* standard to the evidence." *Rosenbloom, supra,* 403 U.S. at 52, n. 18.

In *Garrison, supra,* 379 U.S. at 73, 74, this Court explained:

> "Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and ascertainment of truth. * * * Moreover '[i]n charges against a popular political figure * * * it may be almost impossible to show freedom from ill will or selfish political motives."

The same considerations, of course, pertain to freedom of speech in labor disputes. Adversaries in those struggles likewise will find it impossible to show freedom from ill will or selfish economic motives.[11] Accordingly, whether *New York Times* is viewed as applicable to the publication at issue "by analogy" or "under constitutional compulsion," the "malice" test applied by the court below was improper.[12] *Linn, supra,* 383 U.S. at 65, see *Rosenblatt* v. *Baer,* 383 U.S. 75, 93, n. 3 (1966) (concurring opinion of Mr. Justice Stewart).

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[11] Although appellees testified that they declined to join the Union for reasons of principle (A. 45; Supplemental Appendix *infra,* pp. 2a-3a), it is clear that they escaped an economic burden by not paying dues, and that the Union objected to their nonmembership on that ground and on principle. (J.S. 4a, A. 37).

[12] The trial court refused to instruct the jury that it must find malice in the sense of reckless or deliberate falsehood in order to hold appellants liable. (A. 61-62, 87). We show below that on this record no finding of factual falsity could have been made. See *infra,* pp. 24-33. The trial court also refused to give a "clear and convincing proof" instruction (A. 59, 88), and instructed the jury that proof by a preponderance of the evidence sufficed (A. 59, 92). If *New York Times* is applicable, of course, that was clear error. See 376 U.S. at 285-286.

B. The court below erred in holding the First Amendment inapplicable

The court below held *New York Times* inapplicable because, in its view, "the fact that plaintiffs elected not to join the union was only a private controversy, and an issue of general or public interest was not involved." (J.S. 8a). Even if the characterization were true, which it is not, it would not establish the inapplicability of *New York Times* through *Linn,* for that turns only on whether the publication arose out of a "labor dispute," and both courts below conceded that it did. (J.S. 6a-7a; A. 18).

Moreover, as a constitutional matter, "the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution . . . ," *Thornhill* v. *Alabama,* 310 U.S. 88, 102-103 (1940), and refusal of eligible workers to join a union has been recognized to be a "labor dispute" at least since *Senn* v. *Tile Layers Union,* 301 U.S. 468, 478 (1937). Identification of eligible workers as nonmembers is "information concerning the facts of a labor dispute . . . ," *Thornhill, supra,* which the union has a legitimate interest in disseminating to its members and to the public so that they may individually and collectively persuade and use social pressure to induce nonmembers to join. *Senn* v. *Tile Layers Union, supra; Cafeteria Union* v. *Angelos,* 320 U.S. 293 (1943).[13] As this Court said in *Thomas* v. *Collins,* 323 U.S. 516, 531 (1945):

> "Great secular causes, with small ones, are guarded. The grievances for redress of which the

[13] In *Senn,* and in *Cafeteria Union,* the Union picketed to "coerce" nonmembers, working employers, to join the union. It thereby identified the objects of its disapproval.

> right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest.
>
> "The idea is not sound therefore that the First Amendment's safeguards are wholly inapplicable business or economic activity."

The precise object of the speech in *Thomas* was to persuade workers to join a union. Cf. *Time, Inc.* v. *Hill,* 385 U.S. 374, 388 (1967); *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415, 416, 419 (1971). These holdings establish that, for First Amendment purposes, labor disputes *are* matters of "general or public interest," as distinguished from "purely private [matters] totally unrelated to public affairs." *Garrison* v. *Louisiana, supra,* 379 U.S. at 72.

Plainly, the Constitution guarantees freedom of speech and of the press on matters of mutual interest to the union, its members and the employees it represents. *Thomas* v. *Collins, supra.* Certainly, since plaintiffs were members of the bargaining unit whom the union was required to represent and serve, their refusal to join the union was a matter of both mutual interest and legitimate concern. Plaintiffs' nonmembership was as much a matter of mutual interest and legitimate concern to the particular "public" to which the Branch's newsletter was addressed as the allegedly criminal activities of the plaintiff in *Rosenbloom* v. *Metromedia, Inc.,* 403 U.S. 29 (1971), were to Metromedia's audience in that case. The group of workers which the union represents is, perforce, itself a kind of community: "Participation in the union's affairs by the workman compares to the participation of the citizen in the affairs of his community." *Directors'*

Guild of America, Inc. v. *Superior Court,* 48 Cal. Reptr. 710, 409 P.2d 934, 941 (1966).[14]

Even at common law it has long been recognized that defamatory statements of labor organizations addressed to their members concerning matters of common concern are conditionally privileged. *E.g., Bereman* v. *Power Pub. Co.,* 93 Colo. 581, 27 P.2d 749 (1933); *Ward* v. *Painters Local 300,* 41 Wash. 2d 859, 252 P.2d 253 (1950). The effect of *New York Times* is to convert that conditional privilege into a constitutional right, and to substitute for the kind of "malice" which a plaintiff had to show in order to recover at common law a new and narrower concept of "malice" —*i.e.,* a requirement that the plaintiff must show by "clear and convincing proof" that the allegedly defamatory statements were *factually* false, and made with *knowledge or reckless disregard of their falsity.*

Like the common law, the Constitution affords special protection to internal communications of special purpose organizations, such as labor unions and their members. Cf. *Bogash* v. *Elkins,* 405 Pa. 437, 440, 176 A.2d 677, 679 (1963). Thus, a majority of this Court strained to find § 313 of the Federal Corrupt Practices Act of 1925, 61 Stat. 159 (1947), which in terms prohibited any union "expenditure . . . in connection with any election at which a Senator or Representative . . . are to be voted for . . . ." inapplicable to an outlay for the publication of a statement in a union newspaper endorsing a candidate. *United States* v. *CIO,* 335 U.S. 106 (1948), see *id.* at 107, n. 1; *id.* at 129, 138, 156-159 (1948) (Rutledge J., concurring). The Court stated

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[14] Accord, Bok, *The Regulation of Campaign Tactics Under The National Labor Relations Act,* 78 Harv. L. Rev., 38, 68 (1964).

that "if § 313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members . . . of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures, the gravest doubt would arise in our minds as to its constitutionality." 335 U.S. at 121.[15]

The right to communicate to a special audience about a matter of concern to members of that audience is at the core of the values protected by freedom of speech and press. See *Greenbelt Pub. Assn.* v. *Bresler*, 398 U.S. 6, 11-13 (1970); *Rosenblatt* v. *Baer*, 383 U.S. 75, 83 (1966). Hence, even in circumstances where some other interest may be thought to outweigh the right to communicate ideas to the public at large, the right to communicate them to a "special audience" cannot be abridged. Plainly, that principle is implicated here where the challenged publication appeared in a union newspaper distributed exclusively to union members who were directly injured by appellees' refusal to join. Identifying the nonmembers to the members was a key facet of the organizing effort. It enabled the union to incite its adherents to lawful action designed to persuade the holdouts to join. This Court held in *Senn* and *Angelos* that the First Amendment protects the right of a union to identify an individual as a non-

[15] By contrast, in *United States* v. *UAW*, 352 U.S. 567 (1957), this Court, in the face of another constitutional challenge to the same statute, reversed the dismissal of an indictment alleging that a union had sponsored a television broadcast to influence the electorate at large to vote for candidates. The Court expressly relied on the distinction between a publication addressed to the union membership and a broadcast to the public at large. See 352 U.S. at 588-589.

member to the public at large. *A fortiori,* where, as here, that same information is transmitted to union members by their newsletter, the publication cannot be stripped of its Constitutional immunity on the theory that nonmembership is "only a private matter." (J.S. 8a).

Just as a state cannot by *ipse dixit* convert a matter of legitimate interest to others into a purely "private" concern, so it cannot do so on the theory that optional conduct offensive to others is a "right" which the state desires to protect against exercise of First Amendment freedoms. Thus, Virginia could not constitutionally insulate appellees from the lawful impact of Branch's publication on the theory that because they "had the right to decide for themselves whether to join the union," their refusal to join was a purely private matter. (J.S. 8a). That is the teaching of *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415 (1971), where the defendants circulated a pamphlet criticizing the business practices of a certain real estate broker as "panic selling" and "block busting." The trial court held the leaflet distribution actionable because its primary objective was to bring public pressure on Keefe, the broker, to cease economic activities which were legal under state law. This Court rejected the claim that the Illinois court could constitutionally protect against adverse publicity the "privacy" of Keefe's business practices, 402 U.S. at 419-420. It also held the leaflet distribution constitutionally protected:

> "The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a

> newspaper .... Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. These practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability." 402 U.S. at 419.

In the same sense that plaintiffs had a "right" to refuse to join the Union, Keefe had a "right" to engage in the business practices to which petitioners in that case objected. In neither case could the state constitutionally attach to the "right" immunity from exposure and criticism, however harsh, by those who felt injured and offended by its exercise. In neither case may a state insulate conduct from the exercise of the free speech rights of those adversely affected by mislabelling the controversy a "private matter." [16]

This analysis is implicit in *Greenbelt Pub. Assn.* v. *Bresler,* 398 U.S. 6, 14 (1970), where opponents publicly denounced as "blackmail" Bresler's "wholly legal negotiating proposals." Their purpose, of course, was to bring pressure on Bresler to change the position on which he had a legal "right" to stand. It is to protect such attempts to influence the lawful conduct of others that the guarantees of freedom of speech and of the press exist. " 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts." *Thomas* v. *Collins,* 323 U.S.

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[16] Cf. *AFL* v. *Swing,* 312 U.S. 321, 326 (1941): "A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those employed by him."

516, 537 (1945). Cf. *NLRB* v. *Fruit and Vegetable Packers*, 377 U.S. 58, 76-80 (1964) (concurring opinion).[17]

II. THE PUBLICATION IN ISSUE IS PROTECTED AGAINST STATE COURT DAMAGE SUITS BY THE FIRST AMENDMENT AND NATIONAL LABOR LAW

A. Since appellees alleged no facts showing defamatory falsehood, New York Times protects the publication

Applying the rule of *New York Times Co.* v. *Sullivan* to this case leads ineluctably to the conclusion that the complaints below should have been dismissed.[18] For *New York Times* and its progeny make falsehood the

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[17] To the extent that the court below may have thought appellants' attempts at peaceful persuasion subject to prohibition on the ground that they smacked of "coercion" (see J.S. 8a), its essay is foreclosed by the excerpt from *Austin*, quoted *supra*.

Moreover, "coercion" of employees in the exercise of their right not to join unions is an unfair labor practice subject to federal law. See National Labor Relations Act §§ 7, 8(a)(1), 8(b)(1)(A), 29 U.S.C.A. §§ 157, 158(a)(1), 158(b)(1)(A) (1965); Executive Order 11491, §§ 19(a)(1), 19(b)(1). Drawing the line between coercion on the one hand and protected organizational activity on the other is clearly a function committed exclusively to the federal administrative tribunals charged with enforcing that law. See *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959).

Insofar as the court below may have rested its holding on Virginia's "Right to Work" law (Code of Virginia §§ 40.1-58 to 40.1-69), it obviously erred. Section 14(b) of the National Labor Relations Act, without which state right-to-work laws could not operate, permits the states to protect the "right to work" only against contracts which make union membership a condition of employment. *Retail Clerks* v. *Schermerhorn*, 375 U.S. 96, 104-105 (1963).

[18] *A fortiori*, the trial court should have granted appellants' motions for judgment made at the close of appellees' case, after all the evidence was in, and after the jury reached its verdict (A. 49-50, 58-59, 69-70).

constitutional *sine qua non* of recovery for defamation in the context of public controversy. "... [T]he great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any [utterance] except the knowing or reckless falsehood." *Garrison* v. *Louisiana*, 379 U.S. 64, 73 (1964). And this Court wrote in *Pickering* v. *Board of Education*, 391 U.S. 563, 573 (1968):

> "The public interest in having free and unhindered debate on matters of public importance—the core value of the Free Speech Clause of the First Amendment—is so great that it has been held that a State cannot authorize the recovery of damages by a public official for defamatory statements directed at him *except when such statements are shown to have been made either with knowledge of their falsity or with reckless disregard for their truth or falsity. New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964); *St. Amant* v. *Thompson*, 390 U.S. 727 (1968). Compare *Linn* v. *United Plant Guard Workers*, 383 U.S. 53 (1966). The same test has been applied to suits for invasion of privacy based on false statements where a 'matter of public interest' is involved. *Time, Inc.* v. *Hill*, 385 U.S. 374 (1967)." (Emphasis added.)

Analysis demonstrates that the publication at issue here imports but one statement of fact—that plaintiffs were wilful nonmembers of the union. That factual assertion was true, since the record establishes that a scab is an individual who, like appellees, refuses to join a labor union, p. 4, n. 3, *supra*.[19] The rest, as shown

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[19] *Gertz* v. *Robert Welch, Inc.*, No. 72-617, is to be distinguished on this ground. There the court of appeals assumed that the statement that plaintiff (petitioner in this Court) was a "communist-fronter" was *untrue* in fact. See 471 F.2d at 802, 806, 807. Cf. *New York Times, supra*, 376 U.S. at 288-292. And the impli-

below, is nothing more than expression of the writer's opinion of nonmembers, couched in colorful hyperbole (J.S. 4a); used simply as "figures of speech" (A. 34-35, 37).

The pejorative characterization of "scabs" pertained to an entire class, identified by a single common characteristic—wilful refusal to join or active opposition to a union. It did not purport to be factual description of appellees personally. Thus, the characterization is unmistakably an attack on the position of one side in the controversy over unionization in the form of an unflattering personification of a nonmember. Inevitably, therefore, the record is completely devoid of evidence that anyone in the postal station or anywhere else thought appellees had "water brains" or combination "backbone[s] of jelly and glue," or that they had been accused of the crime of treason. "[E]ven the most careless reader must have perceived that the word[s] used [were] no more than rhetorical hyperbole, vigorous epithet[s] used by those who considered [appellees'] . . . position extremely unreasonable." *Greenbelt, supra,* 398 U.S. at 14. *Semble: Time, Inc.* v. *Johnston,* 448 F.2d 378, 384 (4th Cir. 1971). Cf. *Watts* v. *United States,* 394 U.S. 705 (1969).

This Court has several times held that unlike "a deliberate or reckless untruth," the Constitution protects "insulting," or "repulsive speech," "rhetorical

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cation that Gertz was part of a nationwide conspiracy and the claim that he was "the architect of a gross miscarriage of justice" (471 F.2d at 804), are apparent assertions of fact about Gertz, not obvious hyperbole expressing contempt for the personification of a position disapproved by the publisher. Furthermore, the defamatory publication in *Gertz* was distributed to the public at large, not, as here, only to those most directly affected by the controversy (*ibid.*).

hyperbole," and emotive speech. Such speech, in the context of a labor dispute or other public controversy, cannot be actionable under *New York Times,* absent falsehood. *Linn, supra,* 383 U.S. at 63; *Cafeteria Union* v. *Angelos,* 320 U.S. 293 (1943) (cited in *Linn*); *Greenbelt Pub. Assn.* v. *Bresler,* 398 U.S. 6, 14 (1970); cf. *Cohen* v. *California,* 403 U.S. 15 (1971).

In *Cafeteria Union, supra,* the Court held constitutionally protected organizational picketing in which the pickets characterized the cafeteria as "unfair"; "insulted customers * * * who were about to enter"; and told them that the cafeteria served bad food, and that by "patronizing" it "they were aiding the cause of Fascism." 320 U.S. at 294. In that case, long antedating *New York Times,* the Court observed (320 U.S. at 295) that "[i]n a setting like the present, continuing representations unquestionably false" would not enjoy constitutional protection, but that "to use loose language or undefined slogans that are part of our economic and political controversies—like 'unfair' or 'fascist'—is not to falsify facts." Thus the Court distinguished between "falsifying facts," which the Constitution does not protect, and use of "insulting verbiage," which it does.

In *Greenbelt Pub. Assn.* v. *Bresler, supra,* the defendants had characterized a position which the plaintiff had taken in certain negotiations as "blackmail," and plaintiff urged that he could recover under *New York Times* because ". . . petitioners knew that Bresler had committed no such crime . . ." (398 U.S. at 13). This Court said (398 U.S. at 13, 14):

> "* * * [W]e hold that the imposition of liability on such a basis was constitutionally impermissible—that as a matter of constitutional law, the

word 'blackmail' in these circumstances was not slander when spoken, and not libel when reported in the Greenbelt News Review.

* * *

"It is simply impossible to believe that a reader who reached the word 'blackmail' in either article would not have understood exactly what was meant: it was Bresler's public and wholly legal negotiating proposals that were being criticized. No reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging Bresler with the commission of a criminal offense.[7] On the contrary, even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered Bresler's negotiating position extremely unreasonable. Indeed, the record is completely devoid of evidence that anyone in the city of Greenbelt or anywhere else thought Bresler had been charged with a crime.

"To permit the infliction of financial liability upon the petitioners for publishing these two news articles would subvert the most fundamental meaning of a free press, protected by the First and Fourteenth Amendments.

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[7] Under the law of Maryland the crime of blackmail consists in threatening to accuse any person of an indictable crime or of anything which, if true, would bring the person into contempt or dispute, with a view to extorting money, goods, or things of value. See Md. Ann. Code, Art. 27, §§ 561-563 (1967 Repl. Vol.). There is, of course, no indication in any of the articles that Bresler had engaged in anything approaching such conduct."

Bresler governs here, for the publication in suit is nothing more than "rhetorical hyperbole" expressing the writer's contempt for "scabs." Accord: *Garrison* v. *Louisiana, supra,* 379 U.S. at 76 ("racketeer influ-

ences"); *Time, Inc.* v. *Johnston,* 448 F.2d 378, 384 (4th Cir. 1971).[20]

These constitutional decisions reflect the more enlightened common law cases. The point is well illustrated by the decision in *Curtis Publishing Co.* v. *Birdsong,* 360 F. 2d 344, 345 (5th Cir. 1966). There the plaintiffs claimed that a reference to them in a magazine article as "those bastards" constituted "obscene and fighting words of and concerning plaintiffs and reflecting on their personal reputation." The court, however, ordered dismissal of the complaint, stating (at 348):

> "It is not entirely clear whether the plaintiffs are alleging that by the use of the phrase 'those bastards' the allegedly libelous article questioned the legitimacy of their birth. However this may be, it is perfectly clear that no reasonable person of ordinary intelligence could believe that the person whom the author of the article was quoting was accusing every member of the Mississippi Highway Patrol who was on duty at Oxford of having been born out of wedlock. *On the contrary it is perfectly apparent that these words were used as mere epithets, as terms of abuse and opprobrium.* As such they had no real meaning except

[20] There the court wrote:

> "No one reading the article would have assumed that Auerbach was stating that the plaintiff was actually and literally 'destroyed,' during the game being discussed . . . . In describing the event, he used phrases of some vividness, used them in a figurative, not literal sense, used a form of hyperbole typical in sports parlance. *New York Times,* in its application, does not interdict legitimate or normal hyperbole . . . . To deny to the press the right to use hyperbole, under the threat of removing the protecting mantle of *New York Times,* would condemn the press to an arid, dessicated recital of bare facts." 448 F.2d at 384.

tc indicate that the individual who used them was under a strong emotional feeling of dislike toward those about whom he used them. *Not being intended or understood as statements of fact they are impossible of proof or disproof.* Indeed such words of vituperation and abuse reflect more on the character of the user than they do on that of the individual to whom they are intended to refer. It has long been settled that such words are not of themselves actionable as libelous. Robbins v. Treadway, 1829, 25 Ky. (2 J.J. Marsh.) 540, 541; Rice v. Simmons, 1838, 2 Del. (2 Harr.) 417, 31 Am. Dec. 766; Dalton v. Woodward, 1938, 134 Neb. 915, 280 N.W. 215; Barry v. Kirkland, 1948, 149 Neb. 839, 32 N.W. 2d 757; Dorney v. Dairymen's League Cooperative Ass'n, D.C. N.J. 1957, 149 F. Supp. 615 Rawlins v. McKee, Tex. Civ. App. 1959, 327 S.W. 2d 633." (Emphasis added.)[21]

The kind of "rhetorical hyperbole" (*Bresler, supra*), upon which the judgment below rests is hardly novel. "It could probably be shown by facts and figures," said Mark Twain, "that there is no distinctly native American Criminal class except Congress." Kronenberger, *The Cutting Edge* 124 (1970). Hyperbole is typical of

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[21] Similarly, the North Carolina Supreme Court held:

"*Mere vituperation and name calling directed against an employee or vice versa, in the course of an organizing campaign, are not sufficient basis for a recovery of damages for slander or libel.* Even where the plaintiff is an individual, some thickness of skin is required for him by the law in the realm of labor disputes, just as in battles in the political arena. Where, however, *the false language goes beyond insulting language and is a positive charge of conduct in specific instances and it is made with knowledge of its falsity or reckless disregard of whether it is true or false,* damages may be recovered for resulting injury . . . ." *R. H. Bouligny, Inc.* v. *United Steelworkers,* 270 N.C. 160, 154 S.E. 2d 344, 356 (1967) (Emphasis added).

"uninhibited, robust, and wide open" social debate. For example, after the Civil War, a widely distributed attack on office holders in the South was couched in the following "insulting" language:

> "Words are wanting to do full justice to the genus scallawag. He is a cur with a contracted head, downward look, slinking and uneasy gait; sleeps in the woods, like old Crossland, at the bare idea of a Ku-Klux raid.
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> * * *
>
> "Our scallawag is the local leper of the community . . . . [H]e is a mangy dog, slinking through the alleys, haunting the Governor's office, defiling with tobacco juice the steps of the Capitol, stretching his lazy carcass in the sun on the Square, or the benches of the Mayor's Court.
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> * * *
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> ". . . For office, yet in prospective, he hath bartered respectability; hath abandoned business, and ceased to labor with his hands . . . ."

Reproduced in Butterfield, *The American Past* 190 (1947). See also *id.* at 251 (reproducing *"The Labor Despot,"* a pejorative cartoon and essay attacking union representatives).

This Court has held rhetorical hyperbole to be within First Amendment protection, we submit, in recognition not only of its ubiquity, *Linn, supra,* 383 U.S. at 58, but also of its emotive, and therefore persuasive force. Even the most salty forms of emotive speech are protected from unwarranted state intrusion. Just two years ago, in holding that the words "Fuck the Draft," emblazoned on a man's

jacket, are protected by the First Amendment, the Court explained:

> ". . . we cannot overlook the fact, because it is well illustrated by the episode involved here, that much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words often are chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech has little or no regard for that *emotive function* which *practically speaking, may often be the more important element of the overall message* sought to be communicated." *Cohen* v. *California,* 403 U.S. 15, 25-26 (1971) (Emphasis added).

Hyperbole and insult give the expression of feelings and ideas "emotive . . . force," as *Cohen* graphically illustrates. Cf. *Watts* v. *United States,* 394 U.S. 705 (1969). And "emotive . . . force" is an important element in seeking "to persuade to action." *Thomas* v. *Collins, supra,* 323 U.S. at 537; *Organization for A Better Austin* v. *Keefe, supra,* 402 U.S. at 419. It is for that reason that the First Amendment protects "exaggeration [and] . . . vilification." *Cantwell* v. *Connecticut,* 310 U.S. 296, 310 (1940), quoted with approval in *New York Times Co.* v. *Sullivan, supra,* 376 U.S. at 271.

This case, then, fits within already established principles. The record shows that appellant Branch circulated a rhetorical, emotive expression of its views about a fact which was admittedly true: appellees were not union members. The Constitution, this Court has held, forbids any state action

inhibiting the dissemination of truthful statements in public controversies. See *Pickering* v. *Board of Education,* 391 U.S. 563, 574-575 (1968). Accordingly, policy, reason, and a proper respect for the doctrine of *stare decisis* dictate reversal of the judgment below.[22]

B. The very statements in issue have been held protected under national labor policy

Even if the First Amendment considerations to which we have referred did not dictate reversal for failure to grant appellants' motions to dismiss, federal labor law does.[23] For the National Labor Relations Board has held that dissemination of the very Jack London definition of "scab" which is in issue here is "permissible." *Cambria Clay Prods. Co.,*

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[22] Since this Court's review of the record will establish that the publication at issue is protected against state court damage suits by federal labor law and the First and Fourteenth Amendments, to further entertain the Motions for Judgment would be inconsistent with this Court's opinion in *New York Times Co.* v. *Sullivan, supra,* 376 U.S. at 285:

> "This Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. This is such a case, particularly since the question is one of alleged trespass across 'the line between speech unconditionally guaranteed and speech which may legitimately be regulated.' *Speiser* v. *Randall,* 357 U.S. 513, 525. In cases where that line must be drawn, the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' "

Accord, Greenbelt Pub. Assn v. *Bresler, supra,* 398 U.S. at 10, 11; *Pickering supra,* 391 U.S. at 574-575. Cf. *Vaca* v. *Sipes,* 386 U.S. 171, 193, 198 (1967).

[23] See note 7, *supra.*

106 NLRB 267, 273 (1953), citing *H. N. Thayer Co.*, 99 NLRB 1122 (1951), *enforced in part and remanded in part on other grounds*, 215 F.2d 48 (6th Cir. 1959). It has also held that, in the absence of threatened violence,[24] even hurling profane invective at "scabs" does not deprive strikers of the Act's protection. *E.g., Schott Metal Prods. Co.*, 128 NLRB 415 (1960) ("scabbing sons of bitches"); *Terry Coach Industries, Inc.*, 166 NLRB 560, 562 (1967) ("bastard").

In *Linn*, this Court recognized and relied upon the Board's view that pejorative speech, including the epithet "scab," in strikes and organizing efforts is a form of concerted activity protected by the Act. See 383 U.S. at 60-61. Since *Linn* proceeds on the unchallengeable assumption that state courts may not make actionable what federal law protects, see, *e.g.*, *Hill* v. *Florida*, 325 U.S. 538, 542-544 (1945); *Teamsters Union* v. *Oliver*, 358 U.S. 283, 296 (1959); *Teamsters Union* v. *Morton*, 377 U.S. 252, 256-257 (1964), no judgment for appellees based on the Branch publication at issue here could be sustained. Accordingly, for this reason also, the judgment below should be reversed on the ground that appellants' motions to dismiss should have been granted.

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[24] Of course, use of the word "scab" in circumstances likely to provoke immediate violence is not protected by the Act. In *Youngdahl* v. *Rainfair*, 355 U.S. 131 (1957), upon findings that mass picketing marked by threats of violence and name calling in unison (including cries of "scab") was calculated to provide immediate violence and was *likely to do so* unless promptly restrained, this Court sustained an injunction against the name calling.

As we demonstrate below, *infra*, pp. 37-38, the Virginia courts did not predicate these damage actions on any threat or provocation of immediate violence, and there was no evidence that distribution of the Branch's newsletter was calculated or likely to cause or did cause any violence at any time.

III. THE STATUTE IS UNCONSTITUTIONALLY OVERBROAD AND VAGUE

Gooding v. *Wilson,* 405 U.S. 518 (1972), establishes the unconstitutional overbreadth of the Virginia statute upon which the judgment below was rendered. The Virginia statute makes actionable "all [written or spoken] words which from their usual construction and common acceptation are construed as insults and tend to violence and breach of the peace . . . ." The Georgia statute struck down in *Gooding* provided that "any person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." 405 U.S. at 519.[25] The similarity between the statute involved in *Gooding* and the one at issue here is fatal to the latter's constitutionality. Words which "are construed as insults and tend to violence and breach of the peace" are precisely equivalent to "opprobrious words or abusive language, tending to cause a breach of the peace."[26]

In *Gooding* this Court held that the Georgia statute "sweeps too broadly" because it was not limited to "fighting words" (405 U.S. at 525) used in circum-

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[25] The Virginia statute is no less unconstitutional because violators face civil rather than criminal penalties. As this case graphically illustrates (see p. 46 *infra*), "the fear of damage . . . awards may be markedly more inhibiting than the fear of prosecution under a criminal statute." *New York Times Co.* v. *Sullivan, supra,* 376 U.S. at 277. "What a state may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel." *Ibid.*

[26] Under the Georgia statute, as authoritatively construed, guilt also was measured by common understanding and practice. 405 U.S. at 528.

stances likely to evoke an "immediate violent response" (405 U.S. at 527). To the extent that the two statutes differ on their face, that of Virginia is broader and therefore more deficient. The Georgia statute was held to reach beyond "fighting words" because the term "opprobrious" includes "conveying or intending to convey disgrace," and "abusive" includes "*harsh* insulting language" (405 U.S. at 525, emphasis added). *A fortiori,* mere "insults," which the Virginia statute outlaws, includes more than "words 'which by their very utterance * * * tend to incite an immediate breach of the peace' " (*ibid.*).

Furthermore, the Georgia statute, on its face, prohibited only opprobrious words spoken to or of another *"in his presence."* It could be argued, therefore, as the appellee and the dissenting Justice did, 405 U.S. at 522-523, 528, that the "opprobrious words and abusive language * * * prohibited are [only] those which as a matter of common knowledge and under ordinary circumstances will, when used to or of another person, *and in his presence,* naturally tend to provoke resentment, * * * [*i.e.*] 'fighting words.'" (Emphasis added.) No such argument can be advanced for the Virginia statute, however, for it reaches written words, which are not used "in the presence" of the subject, and which are incapable of provoking an immediate violent response against the writer "by the person to whom, individually, the remark is addressed." 405 U.S. at 524.

The fact that a Georgia court had construed "tendency to cause a breach of the peace" to reach "future" assaults led this Court to conclude that the Georgia statute unconstitutionally encompassed "utterances where there was no likelihood that the per-

son addressed would make an *immediate* violent response." 405 U.S. at 528 (emphasis added).[27] The defect which came into the Georgia statute by construction inheres in the very terms of the Virginia statute. And that defect has been confirmed by interpretation and application in this case and others in which the statute has been invoked. Thus, in this case, the statute was applied not to words spoken in the presence of appellees, but to words written to others, of which appellees became aware only indirectly (A. 39-40, 43, 48-49). See also, *Elder* v. *Holland,* 208 Va. 15, 155 S.E. 2d 369 (1967) (repetition at administrative hearing of another's insulting accusation that policeman was a liar held actionable under statute);[28] *Story* v. *Norfolk-Portsmouth Newspapers, Inc.,* 202 Va. 588, 118 S.E. 2d 668 (1961) (letter to editor attacking plaintiff's performance as school superintendent); *Haycox* v. *Dunn,* 200 Va. 212, 104 S.E. 2d 800 (1958) (newspaper attack on official corruption); *Alexandria Gazette Corp.* v. *West,* 198 Va. 154, 93 S.E. 2d 274 (1956) (newspaper report of

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[27] Mr. Chief Justice Burger and Mr. Justice Blackmun dissented on the ground that the statute should be construed as "preventing precisely that type of personal, face-to-face abusive and insulting language likely to provoke a violent retaliation—self-help, as we euphemistically call it—which the *Chaplinsky* case recognized could be validly prohibited." 405 U.S. at 530, 534, 536-537. Neither suggested that in the absence of face-to-face confrontation "abusive and insulting language" could constitutionally be outlawed. Cf. the concurring opinion of Mr. Justice Powell in *Lewis* v. *City of New Orleans,* 408 U.S. 913 (1972) querying whether, under *Chaplinsky,* "fighting words" addressed to a police officer, "trained to exercise a higher degree of restraint than an ordinary citizen," may constitutionally be prohibited.

[28] Compare *Time, Inc.* v. *Pape,* 401 U.S. 279 (1971); *Rosenfeld* v. *New Jersey,* 408 U.S. 901 (1972).

motion to disqualify domestic relations court judge). Consequently, the statute is unconstitutional on its face. *Gooding, supra; Terminello* v. *Chicago,* 337 U.S. 1 (1949); *Cohen* v. *California,* 403 U.S. 15, 25-26 (1971). Cf. *Edwards* v. *South Carolina,* 372 U.S. 229, 237 (1962); *Cox* v. *Louisiana,* 379 U.S. 536, 551-552 (1965); *Coates* v. *Cincinnati,* 402 U.S. 611 (1971).

Unlike the Georgia courts in *Gooding,* the courts below did not attempt to defend or justify the Virginia statute as a means of vindicating the State's interest in preventing imminent breaches of the peace. Accordingly, they did not attempt to limit the statute by construction to "fighting words" which are likely to provoke an immediate breach of peace by the addressee. Cf. *Chaplinsky* v. *New Hampshire,* 315 U.S. 568, 573 (1942). (See Instruction No. 4, J.S. 9a-10a). Any such limitation, of course, would have required dismissal of plaintiffs' actions, for there was no evidence that distribution of the newsletter was calculated or likely to cause any violence at any time.

Instead, the court below held that constitutional vagueness and overbreadth objections are avoided by construing the "insulting words" statute as "one for libel or slander," designed to protect "reputation and social relationships," which authorizes recovery for insulting words used on a privileged occasion only on proof of "actual malice" (J.S. 5a; ——; cf. A. 18). Upon the premise that "actual malice" in the common law sense defeats the "protect[ion] of the First Amendment," the court held that its construction of the insulting words statute as requiring proof of "actual malice" established that "only those words which are not protected by the First Amendment are

actionable under the statute," and therefore that the objections upheld in *Gooding* "are not applicable in this case." (*Id.*)

The obvious fallacy, of course, is that *New York Times* and its progeny squarely hold, as we have seen, pp. 9, 15-17, *supra,* that common law malice is "constitutionally insufficient" to ground an action against otherwise protected defamation.

We assume, *arguendo,* that the Virginia statute would not be constitutionally overbroad if its application had been unambiguously and unequivocally limited by construction to "purely private libels, totally unrelated to public affairs." *Garrison, supra,* 379 U.S. at 72. But the opinions of the courts below in this case, as well as the result, demonstrate that it is not so limited. Thus, the trial court held that "a qualified privilege attaches to statements and communications made in connection with the various activities of labor unions" (A. 17), but that this privilege exists only "so long as they act without malice and are not actuated by improper motives" (A. 17-18). The trial court instructed the jury that:

> "Under the facts and circumstances of these cases, the statements in question were made upon an occasion known in the law as privileged, and the defendants are not liable for making such statements unless the defendants have abused the privilege." (J.S. 9a, first paragraph of Instruction No. 4).

The Supreme Court of Virginia, as we have seen, announced that under the Virginia statute "actual malice" as defined by the trial court, p. 7, *supra,* overcomes the "public interest in free expression and communication of ideas" (J.S. 5a).

That the Virginia statute is not limited to what its courts consider purely private libels is further confirmed by *Sanders* v. *Harris,* 213 Va. 369, 192 S.E.2d 754 (1973), decided the same day as the instant case, and cited herein by the court below in support of its holding that under the Virginia statute "actual malice" outweighs "the public interest in free expression and communication of ideas." In *Sanders* the court considered a defamatory communication and publication which accused an English professor of refusing to turn over departmental files to the head of the department. It found that "the events and happenings at Western Community College were matters of public or general concern" and that the *New York Times* rule applied. It apparently held, nevertheless, that plaintiff would be entitled to recover if she proved "actual malice" in the sense of hostility, rather than in the *New York Times* sense, and dismissed the case only upon finding:

> "There is no evidence in this case from which the jury could conclude that the statements made by Harris to Chamberlain and the articles published by the Times-World *were made with actual malice or* that they were made with reckless disregard of whether or not they were true." 192 S.E.2d at 757-758 (emphasis added).

In support of its approach, which allows recovery on proof of either "actual malice" or reckless falsity (cf. *Greenbelt Pub. Assn.* v. *Bresler,* 398 U.S. 6, 9-10), the court cited, both in *Sanders* and in the instant case, *Story* v. *Newspapers,* 202 Va. 588, 591, 118 S.E.2d 668, 670 (1961), where the Virginia insulting words statute, construed as requiring proof of common law "malice," was applied to newspaper criticism of a person "in a public capacity."

Inasmuch as the Virginia statute, as construed, is susceptible of application to defamation concerning public officials and matters of public or general interest, it is unconstitutionally overbroad, even assuming *arguendo,* as the court opined in another context, that the issue in this case, "whether or not [plaintiffs'] joined the union," is not an issue of public or general concern (J.S. 8a). For, as *Gooding* demonstrates, a statute capable of application to constitutionally protected speech cannot be sustained even in application to clearly unprotected speech (405 U.S. at 520-521), in that case, the unprovoked use of "fighting words" face to face. 405 U.S. at 520, n. 1, last par. Since the Virginia statute, like that in *Gooding,* "seek[s] to regulate 'only spoken [and written] words,'" as distinguished from conduct, it is governed by the same overbreadth rule. *Broadrick* v. *Oklahoma,* 41 U.S. L.W. 5111, 5114 (1973).

If, on the other hand, the Virginia courts had limited the statute as construed to purely private libels, but included defamation arising out of labor disputes generally, or out of disputes over unionization particularly, on the theory that such disputes are not a matter of "public or general concern," the statute would fare no better. For, as we have seen, pp. 9, 15-17, *supra, Linn* and the First Amendment both protect defamation arising out of such disputes against assertion of state jurisdiction based on common law "malice."

Moreover, if Virginia had attempted to single out and treat as "only a private matter" for the purpose of its insulting words statute the issue of workers' refusal to join the union, on the theory that under the state right-to-work law workers have a "right" not to join, the vice of overbreadth would have been com-

pounded by discrimination. The state would then be forbidding speech and publication designed to induce nonmembers to join "because of its message, its ideas, its subject matter, or its content." *Police Department of Chicago* v. *Mosley,* 408 U.S. 92, 95 (1972). That, as *Mosley* holds, is forbidden by the First Amendment and by the Equal Protection Clause of the Fourteenth. See also, *Schacht* v. *United States,* 398 U.S. 58, 62-63 (1970).

In addition to being overbroad, the statute as here construed is void for vagueness. The statute does not define the "insults" which it renders actionable, but refers instead to "usual construction and common acceptation," and to "tendency to violence and breach of the peace." So referenced, "insult" is no less subject to varying individual definition than "annoy," which in *Coates* v. *City of Cincinnati,* 402 U.S. 611, 612-614 (1971), this Court held specifies "no standard of conduct at all."

While the jury was instructed (J.S. 9a) that the statements complained of were to be considered "defamatory and libelous" if they are commonly construed as "insults and tend to violence and breach of the peace," it was also told that:

> "mere words of abuse indicating that one party dislikes another or that he has a low opinion of him, without more, does not amount to defamation. A *certain* amount of vulgar name calling, indicating hostility or ill will, under certain circumstances is tolerated by the law." (Emphasis added.) (J.S. 10a).

This construction and application of the statute, upheld by the court below, leaves at large not only the

question of what language is "insulting," but also *what "amount* of vulgar name calling, indicating hostility or ill will," under the circumstances of this case, is tolerated by Virginia law. As to this, the jury was left free to speculate and to predicate its conclusion on its own prejudices and notions of social policy. Given this latitude, no speaker or writer can predict what language may subject him to liability under the insulting words statute. Since this statute operates directly in the area of First Amendment freedoms, it is unconstitutionally vague. *Coates* v. *Cincinnati, supra; NAACP* v. *Button,* 371 U.S. 415, 432-433, 437-438 (1963). Cf. *Greenbelt Pub. Assn.* v. *Bresler,* 398 U.S. 6, 11 (1970).[29]

IV. THE DAMAGE AWARD WAS EXCESSIVE

In *Linn* v. *Plant Guard Workers,* this court unequivocally stated that in defamation suits arising out of labor disputes, "if the amount of damages awarded is excessive, it is the *duty* of the trial judge to require a remittitur or a new trial." *Linn, supra,* 383 U.S. at 65-66 (emphasis added). Appellants moved for a new trial and a remittitur in the trial court (A. 69-70). The motions were denied and appellants urged below that that denial was error.

In passing upon appellants' contention that the damage award was excessive, the court below seems deliberately to have ignored this Court's command in *Linn* that excessive damages in labor dispute defamation

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[29] At least five other states penalize insulting words or make them actionable by statute. Ala. Code Tit. 14 § 11 (1959); Ky. Rev. Stat. Ann. § 437-020 (1969); Code of W. Va. § 55-7-2 (1946); Louisiana Rev. Stat. Ann. §§ 14:103, 14:103.1 (1972 Supp.); 1942 Miss. Code Ann. § 1059 (1957). None of the statutes define the term "insulting."

cases be remitted. For, in its opinion, the court below quoted a portion of this Court's discussion of the damage problem at pp. 65-66 of the *Linn* opinion. The quotation included this Court's itemization of the injuries for which recovery could be awarded *but deleted the sentence quoted above relating to excessive damages.* See J.S. 11a. Ignoring the teaching of that sentence along with the text, the lower court contented itself with a statement that "there is no fixed standard for measuring exemplary or punitive damages and the amount of the award is largely a matter of discretion with the jury," citing for that assertion a *pre-Linn* Virginia case which was affirmed by this Court without discussion of the amount of the damage award.[30]

Had the court below followed *Linn* it would surely have reduced the judgments to nominal amounts, or, in any event, to levels much lower than those awarded by the jury. For appellees offered no evidence that they suffered any injury whatever from Branch's choice of words other than appellees' self-serving testimony that "they were upset" by Branch's publication. The only other evidence of injury was to the effect that co-workers and others who sympathized with the union treated appellees coolly or with hostility after the publication, something one would expect of union members and their supporters upon learning that appellees had refused to join, regardless of the language used to

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[30] *United Construction Workers* v. *Laburnum*, 194 Va. 872, 895, 75 S.E. 2d 694, 709, *affirmed*, 347 U.S. 656 (1954). The case involved the successful use of threatened violence to force the plaintiff off a lucrative construction project because plaintiff was non-union.

convey that information.[31] When this Court opened the door to state defamation suits in *Linn*, it could not possibly have intended to authorize state courts to permit recovery for the foreseeable reaction of one party's sympathizers to facts, accurately communicated, which they had a lawful—indeed a Constitutional—right to receive and act upon. *Thomas* v. *Collins, supra,* 323 U.S. at 523-524. Hence, the jury could only award damages for appellees' hurt feelings upon learning that the Branch had adopted London's definition of "scab." Such injuries, we submit, cannot possibly support more than nominal damages under *Linn*.

But assuming that appellees' evidence of damage—none of which was pecuniary—was sufficient to support more than a nominal award, it was surely insufficient to support the astronomical "compensatory" and punitive damages which the court below sustained. In determining what damage awards are excessive in this field, it is well to note that at common law the "injuries" which appellees suffered were not compensable at all.

> "There is no occasion for the law to intervene in every case where a flood of billingsgate is loosed in an argument over a back fence. The plaintiff must necessarily be expected and required to be hardened to a certain amount of rough language, and to acts that are definitely inconsiderate and unkind. There is still, in this country at least, such a thing as liberty to express an unflattering opinion of another, however wounding it may be to his feelings; and in the interest not only of freedom of speech but also of avoidance of other more

[31] Two appellees got headaches, assertedly from the tension created by the Union members' aversion.

dangerous conduct, it is still very desirable that some safety valve be left through which irascible tempers may blow off relatively harmless steam.

"There is the further, and still more significant, evident and serious danger of fictitious claims and vexatious suits in such cases. Petty insult or indignity lacks, from its very nature, any convincing assurance that the asserted mental distress is genuine, or that if genuine is serious and reasonable. When a citizen who has been called a son of a bitch testifies that the epithet had destroyed his slumber, ruined his digestion, wrecked his nervous system, and permanently impaired his health, other citizens who on occasion have been called the same thing without catastrophic harm may have legitimate doubts that he was really so upset, or that if he were his sufferings could possibly be so reasonable and justified under the circumstances as to be entitled to compensation." Prosser, *Torts,* 46-47 (3d Ed. 1964).

Yet if the judgments are permitted to stand, and even more so, if other employees named in the same publication could recover equivalent amounts,[32] a major national union will have been financially weakened because of what one rather small branch printed in a local newsletter which was mailed to some 400-odd members. The total jury award, $165,000, was almost seven times the total yearly revenues of appellant Branch and over twenty-three times the annual dues paid by Branch members to appellant NALC.[33] Those

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[32] See note 5, *supra.*

[33] The Branch's total revenues in the year 1971 were $22,952.00. 1971 Annual Report of Old Dominion Branch No. 496, National Association of Letter Carriers, Form LM-3, on file with the United States Department of Labor. Evidence presented at trial apprised

damages provide a startling contrast to the $500 maximum fine provided by Virginia's criminal abusive language and libel and slander laws. Va. Code Ann. § 18.1-255 (1960); *id.* § 18.1-256 (1973 Supp.). Plainly the award reflects "community hostility to [the] defendant[s] or to an ideology . . . [they] represent, rather than a dispassionate appraisal of besmirched reputation."[34]

Since the courts below shirked their obligation to review the damage awards and reduce them if excessive, this Court should reverse these judgments with instructions to remit the damage awards to nominal amounts. Alternatively, given the intangible character of appellees' "injury," we submit, any damages above the maximum fine which the State would impose for criminal libel would be "excessive" within the meaning of *Linn*. Cf. *Wozniak* v. *Local 1111, United Electrical Workers*, 83 LRRM 2575 (Wis. Sup. Ct. 1973).

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the courts below of the approximate revenue of the Branch. See A. 36, 75. NALC's annual per capita dues for active (*i.e.*, non-retired) members in 1971 were $16 (A. 75). Since there are 400 to 420 active members in Branch 496 (A. 36), the total revenue received from them by NALC is between $6,400 and $6,720 per annum.

[34] Currier, *Defamation in Labor Disputes: Preemption and The New Federal Common Law*, 53 Va. L. Rev. 1 (1967). Compare *Wozniak* v. *Local 1111, United Electrical Workers*, 83 LRRM 2575 (Wis. Sup. Ct. 1973) where the court reduced the jury verdict of $5,000 compensatory and $20,000 punitive damages for calling plaintiff a "scab" to $1,000, in reliance, *inter alia*, on the $1,000 maximum fine provided in the Wisconsin Criminal Code for Criminal Defamation.

The opinion in *Wozniak* does not indicate that defendants relied upon *Linn* or asserted any First Amendment rights.

CONCLUSION

For the reasons stated above, the Virginia insulting words statute should be held unconstitutional, the publication at issue should be held protected by national labor policy and the First and Fourteenth Amendments, and the decision and judgments below should be reversed.

Respectfully submitted,

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August 1, 1973

SUPPLEMENTAL APPENDIX

[1]

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

HENRY M. AUSTIN
L. D. BROWN
ROY P. ZIEGENGEIST

-VS-

OLD DOMINION BRANCH # 496
NATIONAL ASSOCIATION OF LETTER CARRIERS AFL-CIO,
An Unincorporated Association,

and

THE NATIONAL ASSOCIATION OF LETTER CARRIERS AFL-CIO

TRANSCRIPT of the evidence and other incidents of the above when heard on *July 1 and 2, 1971,* Before Honorable A. Christian Compton, Judge, and a jury.

[123] ROY P. ZIEGENGEIST, a plaintiff herein, called in his own behalf, first being duly sworn, testified as follows:

Direct Examination

By Mr. Kapral:

* * *

[128] Q. Tell the gentlemen of the jury exactly why you have chosen, after 12 years of employment in the United States Postal Service, not to become affiliated with the Union.

MR. RATNER: I object. The witness just answered the question.

THE COURT: You are not asking the witness to repeat what he just said, are you?

MR. KAPRAL: No.

THE COURT: Do you want to elaborate on the reason, Mr. Ziegengeist?

A. Yes, sir. It is my opinion, like I said, that I owe the Federal Government eight hours work for eight hours pay. It is my opinion that the Union, when they negotiate with Management they negotiate for mainly the things that will help the employee and I realize I am talking about myself, but I feel like the situation as exists in the United States Post Office I felt more things should be done to negotiate for the patron, to improve the service. Therefore I felt I just couldn't go along with the [129] beliefs of the Union and in the same respect I give the same respect to a Union member if he has his strong feeling why he wants to belong, and that is his business. I felt as long as I did my job to the best of my ability I have no guilty feelings about not being a Union member.

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[145] L. D. BROWN, a plaintiff herein, called in his own behalf, first being duly sworn, testified as follows:

Direct Examination

By Mr. Cherry:

Q. Mr. Brown, will you state your name and place of residence.

A. Leslie D. Brown, 3300 Edgewood Avenue, Richmond, Virginia.

Q. How long have you worked for the United States Government in the Postal Service?

A. I have worked for the Post Office for 13 years.

Q. 13 years. Have you ever been a member of the Postal Union here?

A. Yes, at one time I was a member of the Union.

Q. And did you get out of the Union?

A. I got out of the Union.

Q. Any particular reason?

A. Yes, the reason for getting out I didn't like the way the Union was running. I didn't like the way they disbursed with the money was one reason I got out. [146] They would have big conventions and send so many delegates to Hawaii and elsewhere and I didn't like the way the money was disbursed and I got out. Another reason I got out was because of the dues increase. The dues doubled and I stated that I wanted to get out.